

SERVICE DATE - LATE RELEASE NOVEMBER 6, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-101 (Sub-No. 16X)

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ST. LOUIS COUNTY, MN

Decided: November 5, 2001

By petition filed on July 19, 2001, Duluth, Missabe and Iron Range Railway Company (DM&IR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 1.3-mile line of railroad, extending from milepost 14.8 to milepost 16.1, in the city of Hibbing, St. Louis County, MN. A request for issuance of a notice of interim trail use (NITU) and imposition of a public use condition was filed on August 23, 2001, by St. Louis & Lake Counties Regional Railroad Authority (RRA). DM&IR replied to the request on September 10, 2001. We will grant the exemption, subject to environmental, historic preservation, public use, and standard employee protective conditions.

BACKGROUND

The line sought to be abandoned is the final 1.3 miles of the Hull Rust Line. The only shipper located on the line, Edwards Oil (Edwards), has received an annual total of approximately 12 tank cars of brine in recent years. If the line is abandoned, Edwards could be served nearby at Kelly Lake, MN, by The Burlington Northern and Santa Fe Railway Company (BNSF). Edwards currently receives oil at Kelly Lake from BNSF and has indicated that it could receive its brine deliveries there as well. A letter from Edwards in support of the abandonment is attached to the petition. DM&IR also submits a pro forma income statement showing a substantial operating loss in calendar year 2000.¹ DM&IR concludes that the line is being used to provide minimal, nonessential service at a continuing loss and that the valuable rail and other rail materials on the line can be more economically used at other locations on its system.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy

¹ The statement shows that DM&IR transported 14 carloads of brine at \$497.00 per car for total revenues of \$6,958.00. Total costs are shown as \$91,484.00 for a net operating loss of \$84,526.00.

of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving DM&IR of the costs of owning and maintaining the line and allowing it to apply its assets more productively elsewhere on its rail system [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Edwards, the only shipper on the line, does not object to abandonment and has alternative transportation available to it.² Nevertheless, to ensure that the shipper is informed of our action, we will require DM&IR to serve a copy of this decision on Edwards within 5 days of the service date of this decision and to certify to us that it has done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

DM&IR has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on September 17, 2001, and requested comments by October 17, 2001.

In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic marker that may be affected by the proposed abandonment. NGS requests that it be notified 90 days in advance of any activities that would disturb or destroy this marker in order to plan for its relocation. Therefore, SEA recommends that a condition be imposed requiring DM&IR to consult with NGS and provide NGS with 90 days' notice prior to conducting salvage activities, in order to plan for the relocation of the geodetic marker.

SEA also states that the Minnesota Historical Society has indicated that there appears to be one bridge built in 1920 on the line to be abandoned, and that the line itself may have had a

²Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

historical role in the development of the Hull Rust Mahoning Mine, which has been listed on the National Register of Historic Places and has been designated a National Historic Landmark. SEA recommends that a condition be imposed requiring DM&IR to retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way³ until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

Additionally, SEA recommends a pre-salvage consultation condition with the Minnesota Pollution Control Agency (MNPCA). MNPCA has indicated that salvage-related land-disturbing activity and the stockpiling of ties may have some potential to negatively affect water quality.

No comments to the EA were filed. Accordingly, the conditions recommended by SEA in the EA will be imposed. We conclude that the proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As previously noted, RRA requests issuance of a NITU under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). It has submitted a statement of willingness to assume financial responsibility for the right-of-way and acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation for rail service as required under 49 CFR 1152.29. In its reply, DM&IR states that it is not willing to negotiate with RRA for interim trail use. Therefore, because the Trails Act permits only voluntary interim trail use, a NITU cannot be issued for the line segment. See Rail Abandonments–Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986) (Trails).

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Trails, 2 I.C.C.2d at 609. SEA indicated in its EA that the right-of-way may be suitable for other public use following abandonment, and, as noted, RRA has requested that a 180-day public use condition be imposed covering the line segment. Specifically, RRA requests that DM&IR be precluded from: (1) disposing of the rail corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. RRA states that the corridor would make an excellent recreational trail, and that conversion of the property to trail use is in accordance with local plans. RRA indicates that the 180-day time period is needed to complete a trail plan and negotiations.

RRA has met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition will be imposed covering the 1.3-mile segment

³ This would include the entire line.

commencing with the effective date of this decision. We note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, DM&IR is not required to deal exclusively with RRA, but may engage in negotiations with other interested persons.

The parties should note that operation of the public use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. Offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over public use. See Trails, 2 I.C.C.2d at 608. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1), the effective date of this decision will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if the line is sold under the OFA procedures, the petition for abandonment exemption will be dismissed and public use precluded. Alternatively, if the sale under the OFA procedures does not occur, the public use process may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment of the above-described line, subject to: (1) the employee protective conditions in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979); (2) the condition that DM&IR consult with NGS and provide NGS with 90 days' notice prior to conducting salvage activities, in order to plan for the relocation of the geodetic marker; (3) the condition that DM&IR retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way, including the line itself, that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f); (4) the condition that DM&IR, prior to engaging in any salvage activities, consult with MNPCA to address possible effects on water quality from the salvage operation; and (5) the condition that DM&IR leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days from the effective date of this decision to enable any state or local governmental agency or other interested person to negotiate the acquisition of the line for public use.

2. DM&IR is directed to serve a copy of this decision on Edwards Oil within 5 days after the service date of this decision and certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by November 16, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective December 6, 2001. Petitions to stay must be filed by November 21, 2001, and petitions to reopen must be filed by December 3, 2001.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), DM&IR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by DM&IR's filing of a notice of consummation by November 6, 2002, there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary